

Remarks

Claims 6, 7, 11, 15 and 20 are pending. No new matter is added. Reconsideration of the subject application is respectfully requested.

Continued Examination Under 37 C.F.R. § 1.114

A request for continued examination, and the appropriate fee, was filed in the subject application after final rejection. Thus, the finality of the previous Office action was withdrawn. However, the present Office action has been issued as a final Office action. Applicant requests that the finality of the present Office action be withdrawn.

The previous Office action was issued on March 25, 2003. A response was filed on April 29, 2003, within two months of receipt of the final Office action. In response, Applicant received an Advisory Action stating that the response had not been entered as (1) it raised new issues that would required further consideration and/or search, and (2) it raised issues of new matter (see page 2 of the Advisory Action dated May 25, 2003).

In response, Applicant filed a Request for Continued Examination, paid the required fee, and re-submitted the amendments and arguments in the form of a preliminary amendment. The Office action cites the MPEP 706.07(b) as the reason for issuing the present Office action as a final Office action. However, the MPEP states:

“However, it would not be proper to make final a first Office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised, or (B) the issue of new matter was raised.”

The advisory action, dated May 25, 2003, clearly states on page 2 that “the proposed amendments will not be entered because they raise new issues that would require further consideration and/or search” and that they “raise the issue of new matter” (quoted from page 2 of the Advisory Action dated May 30, 2003). Thus, Applicant believes, based on MPEP § 706.07(b), and based on the statements in the Advisory Action, that the present Office action should have been issued as a first Office action. Reconsideration and removal of the finality of the present Office action is

respectfully requested.

Restriction Requirement

Claim 19 was canceled previously. Claims 6-18 and 20 (Group III) are pending. Applicant submits that the previous cancellation of claim 19 renders the restriction requirement moot.

Double Patenting

Claims 6-7, 15 and 20 were rejected under the judicially created doctrine of obviousness type double patenting as allegedly being unpatentable over claims 1-17 of U.S. Patent No. 6,210,974. Applicant respectfully disagrees with this rejection for the reasons of record.

However, solely to advance prosecution, submitted herewith is a Terminal Disclaimer disclaiming the terminal part of any patent granted on the present application which extends beyond the expiration date of the full statutory term of U.S. Patent No. 6,210,974.

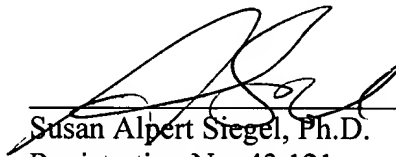
Conclusion

Applicant submits that the pending claims are in condition for allowance, which action is requested. If there are any additional matters to discuss prior to the allowance of the claims, Applicant respectfully requests a telephone conference with the undersigned representative.

Respectfully submitted,

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